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Joan Claybrook, President

July 16, 2001

The Honorable John Dingell
Ranking Member
Energy and Commerce Committee
Washington, D.C. 20515

RE: The Bipartisan Patient Protection Act -- End Special Legal Protection for HMOs

Dear Ranking Member Dingell:

On behalf of Public Citizen's 150,000 members, we are writing in support of your proposal to eliminate the special protection from accountability that current federal law grants to just one industry -- HMOs and other managed care plans. H.R. 526, the Bipartisan Patient Protection Act of 2001, has strong patient protection provisions that will hold HMOs accountable for their decisions.

When death or serious injury occurs because of an HMO's decision to deny necessary or appropriate medical care, the patient or their surviving family members should have the right to go to court to seek redress and the insurer should be held accountable for the consequences of negligent or reckless decisions. But currently, under the Employment Retirement Income Security Act of 1974 (ERISA), patients injured by their employer-provided managed care plans are prohibited from going to state court to seek the remedies available under their state's malpractice and consumer protection laws.

The bill would lift this ERISA preemption of state law in most cases and allow injured patients to seek compensation from the managed care plan under applicable state law. The bill's accountability provisions provide these vital consumer protections:

- **Eliminate HMOs' special protection from corporate accountability.** Approximately 165 million Americans are covered by private sector, employer-paid health insurance plans. A large majority receive their care from an HMO or other managed care plans; three out of four of these are for-profit firms, which have a financial incentive to spend less on health care in order to maximize their profits and thus raise their stock prices. Under managed care, decisions about necessary and appropriate medical care increasingly are made by insurance company bureaucrats seeking to hold down costs rather than by a physician or other health care provider. Because of the current federal ERISA

Ralph Nader, Founder

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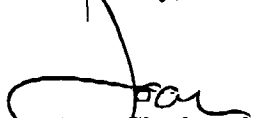


preemption, these managed care bureaucrats and the corporations they work for cannot be held accountable in state court for the consequences of their faulty decisions. No other industry has such special legal protection -- the HMO industry should not have it either.


- **Create an incentive to provide, not deny, necessary and appropriate care.** Under ERISA, injured patients and their families who are wrongly denied needed medical treatment can only recover the cost of the procedure for which the plan failed to pay and attorney's fees. Because health plans can escape from the responsibility to fully compensate injured patients, the current law gives HMOs a huge incentive to delay and deny necessary and appropriate care. Only the right to pursue full compensation, including payments for lost income and pain and suffering, gives health care organizations the proper incentive to make sound medical decisions in the first instance.
- **Allow fair recovery for injured victims and make those responsible bear the cost of serious injury or death.** The current ERISA preemption prevents many injured persons and their families from being fully compensated for lost income and other economic losses or non-economic losses such as loss of fertility, loss of a limb, loss of a child, permanent disfigurement, or continuing severe pain. The cost of the consequences of the HMO's wrongful decisions, which should be borne by the HMO, is shifted from the HMO to those injured, their families and communities and the taxpayers. The bill will make sure that HMOs bear the costs of their wrongful decisions.

Thank you for supporting legislation that allows consumers to hold managed care plans accountable.

Sincerely,



Joan Claybrook
President



Frank Clemente,
Director, Congress Watch